

## Preemption: Federal, State, and Local Jurisdiction Over Pesticide Use

Federal laws are always preeminent: once Congress passes laws that occupy an area, no government at a lower tier, i.e., at the state or local level, may pass laws that conflict with the federal laws. For example, FIFRA clearly states that pesticide labeling is regulated only at the federal level, by that preempting state or local laws in this arena. In other words, no state or local government can dictate what is on a pesticide product label. (However, a state can refuse to allow registration of a product and hence the possession, sale and use of any pesticide not meeting its own standards.)

The California Constitution also allows the State to preempt local jurisdictions. The Constitution states that local governing bodies (for example, City Councils or Boards of Supervisors) may pass laws (called "ordinances" at the local level) provided they do not conflict with state law. However, California State law (Chapter 1386, Statutes of 1984) states that no local government "may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these [local] ordinances, laws, or regulations are void and of no force or effect." (FAC Section 11501.1)

The 1984 legislation was passed in response to a State Supreme Court ruling that same year in *The People v. County of Mendocino*. In that case, the State Attorney General had sued the county, arguing that State law preempted a 1979 initiative approved by Mendocino County voters to prohibit the aerial application in the county of phenoxy herbicides. The herbicides were used by a forest products company to retard hardwood growth in favor of conifer growth. The initiative followed a 1977 incident in which an aerial herbicide application drifted nearly three miles onto school buses.

A lower court ruled in favor of the State, finding that California law preempted county regulation of pesticide use. However, in 1984 the State Supreme Court disagreed, ruling that "the Legislature has not preempted local regulation of pesticide use," that Mendocino's "initiative ordinance neither duplicates nor contradicts any statute," and that voters in any California county could prohibit the use of pesticides in that county, even if such use were authorized by state and federal law.

The Court stated, "The legislative history (of FIFRA) does not demonstrate a clear Congressional intention to preempt traditional local police powers to regulate the use of pesticides or to preempt state power to distribute its regulatory authority between itself and its political subdivisions."

In response, the State Legislature passed a bill adding Section 11501.1 to the Food and Agricultural Code, stating it is "the intent of the Legislature to overturn" the Supreme Court ruling, and that "matters relating to (pesticides) are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration."

In an unpublished 1986 opinion, the Court of Appeal for the Third Appellate District found FAC Section 11501.1 constitutional and in so doing invalidated a Trinity County local pesticide ordinance.

(Local governing bodies may pass ordinances that regulate or restrict pesticide use in their own operations. For example, a City Council may pass an ordinance that restricts pesticide use in municipal buildings and in public parks, and a school district board can decree that certain pesticides cannot be used in schools.)

In 1991, in *Wisconsin Public Intervenor v. Ralph Mortier*, the U.S. Supreme Court ruled that, absent state law to the contrary, federal pesticide law does not preempt local regulations dealing with the use of pesticides. The U.S. Supreme Court ruled that FIFRA "leaves the allocation of regulatory authority to the absolute discretion of the states themselves, including the options of . . . leaving local regulation of pesticides in the hands of local authorities under existing state laws." Because California law clearly prohibits local ordinances, the 1991 U.S. Supreme Court decision had no effect in California.

In 1996, legislation (Chapter 361, AB 124) clarified but did not significantly alter DPR's preemption authority. The legislation required the Department to notify any local agency that promulgates an ordinance governing the sales, use, or handling of pesticides whenever the Department determines that the ordinance is preempted by existing State law. The bill also required the Department, if necessary, to file court action to have the ordinance invalidated and to prohibit its enforcement.